

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA**

**IN RE
THE BABCOCK & WILCOX COMPANY,**

**NUMBER
00-10992
SECTION B**

DEBTOR(S)

**CHAPTER 11
REORGANIZATION**

Jointly Administered with

DIAMOND POWER INTERNATIONAL, INC.	00-10993
BABCOCK & WILCOX CONSTRUCTION CO., INC.	00-10994
AMERICON, INC.	00-10995

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN SUPPORT OF AN ORDER RECOMMENDING CONFIRMATION OF
THE JOINT PLAN OF REORGANIZATION AS OF SEPTEMBER 28, 2005,
AS AMENDED THROUGH DECEMBER 22, 2005**

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I. **INTRODUCTION**

1. This matter came before this Court as a hearing on the confirmation of the Joint Plan of Reorganization as of September 28, 2005, as amended through December 22, 2005 (P-7003) (the “September 28 Plan”),¹ proposed by the Debtors,² the Asbestos Claimants’ Committee, the Legal Representative for Future Asbestos-Related Claimants, and McDermott Incorporated (collectively, the “Plan Proponents”).

2. This Court has reviewed the supporting materials filed by the Plan Proponents, has considered the affidavits and other exhibits admitted into evidence at the hearing in support of confirmation of the September 28 Plan; and has received the oral arguments of all interested counsel.

3. Further, this Court takes judicial notice of the docket of the Debtors’ Chapter 11 cases, all pleadings and other documents filed, all orders entered, and evidence and arguments presented at hearings during the pendency of these cases, including adversary proceedings before

¹ Capitalized terms used but not defined herein, but are defined in the September 28 Plan, shall have the meanings given to them in the September 28 Plan.

² See title for the four names of the Debtors.

this Court; and also takes judicial notice of the docket and similar record items in the related proceedings, including certain adversary proceedings, conducted in the United States District Court before the Honorable Sarah S. Vance.

4. After due deliberation, this Court recommends that the September 28 Plan be confirmed based upon the following Findings of Fact and Conclusions of Law regarding core matters.³

II. **BACKGROUND**

A. *Brief Description of the Parties and the Chapter 11 Proceedings.*

5. The Babcock & Wilcox Company (“B&W”) operates through a number of business divisions and three wholly owned subsidiaries and is itself a wholly owned indirect subsidiary of McDermott International, Inc.⁴ B&W’s Fossil Power Division has been recognized as B&W’s flagship business since 1867.⁵ The division designs and constructs new, large utility and industrial boilers and scrubbers, which contained, or are alleged to have contained asbestos liners.⁶ B&W’s other operating division, the Service Division, provides service and maintenance to the installed base of coal-fired utility generation units as well as to equipment supplied by competitors.⁷ The close connection between boiler design, construction and maintenance makes operating the functions within a single business both a logical and profitable business combination.⁸

³ These Findings of Fact and Conclusions of Law constitute this Court’s findings of fact under Rule 52 of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rules 7052 and 9014.

⁴ Keller Aff. ¶ 5.

⁵ Keller Aff. ¶ 7.

⁶ Id.

⁷ Keller Aff. ¶ 8.

⁸ Keller Aff. ¶ 9.

6. In the late 1970's, asbestos-related personal injury claims were asserted against B&W, and by 1999, the number of claims filed against B&W had reached over 400,000.⁹ As a result of the large number of asbestos personal injury claims asserted against B&W and demands for increased amounts to settle them, the Debtors filed for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the "Bankruptcy Code") on February 22, 2000.¹⁰

7. Following the filing, the official Asbestos Claimants' Committee (the "ACC") was formed by the United States Trustee, and this Court authorized the appointment of Eric D. Green as the legal representative for the future asbestos-related claimants (the "FCR").¹¹ Initially, the Debtors and the ACC and FCR did not agree on the terms of a plan of reorganization.¹²

8. In February 2001, this Court granted the Debtors' request that a mediator be appointed.¹³ Professor Francis McGovern ("McGovern") was appointed to mediate with the Debtors, McDermott Incorporated ("MI") and its affiliates, the ACC and the FCR regarding the general financial terms of a plan of reorganization.¹⁴ On February 22, 2001, at this Court's insistence, the Debtors filed their disclosure statement and plan.¹⁵ Initially, both the ACC and FCR did not agree to the Debtors' plan, and it was not set for hearing.¹⁶ In May 2002, this Court

⁹ Nesser Aff. ¶ 7.

¹⁰ B&W and the other Debtors filed reorganization cases, Nos. 00-10992, 00-10993, 00-10994 and 00-10995 in the United States Bankruptcy Court for the Eastern District of Louisiana. Nesser Aff. ¶ 7.

¹¹ Docket # 95 & # 1113.

¹² Green Aff. ¶¶ 22-23.

¹³ Docket # 1682.

¹⁴ Docket # 1682.

¹⁵ Nesser Aff. ¶ 12; Docket # 1693 & # 1694.

¹⁶ Nesser Aff. ¶ 13.

terminated the Debtors' exclusive period to file a plan of reorganization.¹⁷ Thereafter, in July, 2002, the ACC and the FCR filed their own disclosure statement and plan.¹⁸

9. After much negotiation, the ACC, the FCR and the Debtors were able to resolve many of their differences and achieved an agreement-in-principle on the terms of a proposed plan of reorganization.¹⁹ On December 19, 2002, the Debtors, MI, the ACC and the FCR filed a "substantially complete" form of a joint disclosure statement.²⁰ Thereafter, on June 25, 2003, the Plan Proponents filed the Third Amended Joint Disclosure Statement and the Third Amended Joint Plan of Reorganization (the "Third Amended Plan").²¹ On July 7, 2003, this Court approved the Third Amended Joint Disclosure Statement, and on July 10, 2003, this Court entered an order approving notice of the confirmation hearing, the solicitation package, and the voting, tabulation, and mailing procedures.²²

10. On August 15, 2003, Basile J. Uddo was appointed the legal representative for Apollo/Parks Township future interest holders (the "Apollo FCR").²³ After his appointment, further negotiations with the settling parties took place, which resulted in the filing of technical amendments to the Third Amended Plan and a revised Apollo/Parks Township Settlement Agreement.²⁴ The Third Amended Plan was subsequently modified by further technical amendments. Over the course of the following 18 months, this Court approved four sets of technical modifications to the Third Amended Plan.²⁵

¹⁷ Docket # 3173.

¹⁸ Docket # 3320 & # 3321.

¹⁹ Green Aff. ¶¶ 25-28; Nesser Aff. ¶ 14.

²⁰ Docket # 3825.

²¹ Docket # 4293 & # 4294.

²² Docket # 4318 & # 4354.

²³ Docket # 4561.

²⁴ Nesser Aff. ¶ 17.

²⁵ Docket # 5241, # 5484, # 5855, & # 6384.

11. The confirmation hearing on the Third Amended Plan commenced on September 22, 2003 and continued through January 2004 at which time this Court took the matter under advisement. On November 9, 2004, this Court entered its Amended Findings of Fact and Conclusions of Law Regarding Core Matters and Proposed Findings of Fact, Conclusions of Law and Recommendations to the District Court with Respect to Non-Core Matters.²⁶ Among other things, this Court recommended that the District Court confirm the Third Amended Plan.²⁷

12. Various parties in interest filed objections, pursuant to Bankruptcy Rule 9033 (the “9033 Objections”), to and appeals from the Amended Findings and Conclusions.²⁸ The parties fully briefed their appeals and 9033 Objections throughout the Winter and Spring of 2005. The District Court heard oral argument on the appeals and 9033 Objections on July 21, 2005, after which the District Court took the matter under advisement. As the proceedings involving the Third Amended Plan progressed, the Plan Proponents continued to negotiate settlements with various objectors/appellants to resolve, among other things, their objections to the Third Amended Plan.²⁹

13. Due to the uncertainty regarding when appeals of the Third Amended Plan would be exhausted and this bankruptcy case would be concluded, beginning in January 2005, the Plan Proponents discussed alternative ways to bring about a timely resolution of these Chapter 11 proceedings in a manner that provided more certainty to all parties in interest.³⁰ Those

²⁶ Docket # 6133 & # 6134.

²⁷ Docket # 6133 & # 6134.

²⁸ Such parties included various insurers: (1) the ACE Companies; (2) American Nuclear Insurers and Mutual Atomic Energy Liability Underwriters (“ANI”); (3) Certain Underwriters at Lloyd’s, London and Certain Market Companies (collectively, “London”); (4) Dai Tokyo Insurance Co. (UK) Ltd. and Sphere Drake Insurance PLC (“Dai Tokyo”); (5) Maryland Insurance Company; and (6) St. Paul Mercury Insurance Company. In addition, a group known as the Certain Law Firms filed an appeal from and 9033 Objections to the Amended Findings and Conclusions.

²⁹ Nesser Aff. ¶ 22.

³⁰ Green Aff. ¶ 32.

discussions led to an alternative proposed settlement which was publicly announced on August 29, 2005 and substantially finalized in the form of the September 28 Plan documents filed with this Court on September 29, 2005.³¹

14. On September 29, 2005, along with the September 28 Plan, the Plan Proponents filed their Summary Disclosure Statement As Of September 28, 2005 Under Section 1125 of the Bankruptcy Code³² with respect to the Joint Plan of Reorganization as of September 28, 2005, Proposed by the Debtors, the Asbestos Claimants' Committee, the Future Asbestos-Related Claimants' Representative, and McDermott Incorporated (the "Summary Disclosure Statement").³³

15. After the Plan Proponents filed the September 28 Plan and the Summary Disclosure Statement, they continued to negotiate and achieve settlements with parties in interest who had objected to the Third Amended Plan and/or who might object to confirmation of the September 28 Plan.³⁴ Since the time this Court entered its Amended Findings and Conclusions, the Plan Proponents have concluded settlements with various insurers of asbestos-related claims, including Underwriters at Lloyd's/Equitas, certain London Market Companies, certain American General Insurers, Federal Insurance Company, St. Paul Mercury Insurance Company, Fireman's Fund Insurance Company, the ACE Parties, and certain New York Marine Parties.³⁵

16. The Debtors have also finalized a settlement agreement with certain present Apollo/Parks Township claimants and ARCO, which this Court approved on December 22,

³¹ Green Aff. ¶ 33; Docket # 6756.

³² Unless otherwise specified, or the context otherwise requires, all Section references used herein refer to Sections of the Bankruptcy Code.

³³ Docket # 6757.

³⁴ Nesser Aff. ¶¶ 22-26.

³⁵ See Docket # 6531 (Underwriters at Lloyd's/Equitas), # 6887 (certain London Companies), Docket # 6886 (certain American General Insurers), Docket # 6885 (Federal Insurance Company), Docket # ___ (St. Paul), Docket # ___ (Fireman's Fund), Docket # ___ (the ACE Parties), Docket # ___ (certain New York Marine Parties).

2005.³⁶ Further, in conjunction with the settlement with certain present Apollo/Parks Township claimants, the Debtors entered into a stipulation with the Debtors' nuclear insurers which was also approved by this Court.³⁷ The Debtors also entered into stipulations with Citgo, which was approved by this Court, and the Apollo FCR.³⁸

17. At the hearing on confirmation of the September 28 Plan, the Debtors described a settlement of the objections to the September 28 Plan filed by the Certain Law Firms.³⁹ The Certain Law Firms have withdrawn their objections to the confirmation of the September 28 Plan.

18. The result of all of these settlements is that confirmation of the September 28 Plan is unopposed.

III. JURISDICTION AND VENUE

19. On December 22, 2005, all parties that had pending appeals from and objections to this Court's November 9, 2004 Order recommending confirmation of the Third Amended Plan filed, with the District Court, an Ex Parte Joint Motion For Order Vacating Bankruptcy Court Order Recommending Confirmation Of Plan Of Reorganization And Dismissing Appeals And 9033 Objections, Without Prejudice (the "Motion to Vacate"). In the Motion to Vacate, the parties requested that the District Court vacate this Court's November 9, 2004 Order recommending confirmation of the Third Amended Plan, and dismiss, without prejudice, all remaining appeals and objections under Rule 9033 relating to the same.

20. The Honorable Sarah S. Vance of the United States District Court for the Eastern District of Louisiana granted the Motion to Vacate by order signed December 27, 2005.

³⁶ Nesser Aff. ¶ 23; Docket # 7001.

³⁷ Nesser Aff. ¶ 24; Docket # 7001.

³⁸ Nesser Aff. ¶ 25; Docket # 7002.

³⁹ See Confirmation Hearing Exhibit 13.

21. As a consequence, this Court has jurisdiction to recommend confirmation of the September 28 Plan pursuant to 28 U.S.C. §§ 1334(a), and to enter these Findings of Fact and Conclusions of Law pursuant to 28 U.S.C. § 157(b). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(B) & (L). This opinion constitutes this Court’s findings of fact and conclusions of law regarding core matters. To the extent it is determined that any of these findings of fact or conclusions of law pertain to non-core matters under § 157(b), such findings of fact and conclusions of law shall be deemed proposed findings and conclusions.

22. B&W is a Delaware corporation with its “nerve center” principal place of business in New Orleans as of the Petition Date. Accordingly, venue in this judicial district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

IV. OVERVIEW OF THE SEPTEMBER 28 PLAN

A. Classification and Voting

23. The September 28 Plan provides for eleven classes of claims as follows:⁴⁰

CLASSIFICATION	DESCRIPTION	VOTING STATUS	VOTE
Class 1	Priority Claims	Unimpaired – not entitled to vote.	
Class 2	Non-Priority Secured Claims	Unimpaired – not entitled to vote.	
Class 3	Workers’ Compensation Claims	Unimpaired – not entitled to vote.	
Class 4	Unsecured Trade Claims	Unimpaired – not entitled to vote.	
Class 5	General Unsecured Claims	Impaired – entitled to vote.	ACCEPT
Class 6	Asbestos PI Trust Claims	Impaired – entitled to vote.	ACCEPT
Class 7	Asbestos PD Claims and Indirect Asbestos PD Claims	Impaired – entitled to vote.	ACCEPT
Class 8	Apollo/Parks Township Claims	Unimpaired– not entitled to vote.	
Class 9	Intercompany Claims in Debtor Chain	Unimpaired – not entitled to vote.	
Class 10	Affiliate Intercompany Claims	Unimpaired – not entitled to vote.	
Class 11A	Equity Interests in The Babcock & Wilcox Company	Impaired – entitled to vote.	ACCEPT

⁴⁰ Plan § 3.1; Rust Aff. Exhibit A.

CLASSIFICATION	DESCRIPTION	VOTING STATUS	VOTE
Class 11B	Equity Interests in Diamond Power International, Inc.	Unimpaired – not entitled to vote.	
Class 11C	Equity Interests in Babcock & Wilcox Construction Co., Inc.	Unimpaired – not entitled to vote.	
Class 11D	Equity Interests in Americon, Inc.	Unimpaired – not entitled to vote.	

24. The September 28 Plan has been accepted by all classes of claims that are entitled to vote.⁴¹ The largest class of claims, Class 6 Claims – Asbestos PI Trust Claims, voted overwhelmingly for the September 28 Plan.⁴² Further, the FCR supports the September 28 Plan and believes it is fair and equitable to future claimants.⁴³

B. Treatment of Asbestos Personal Injury Claims

25. The core of the September 28 Plan is the creation of the Asbestos Personal Injury Trust.⁴⁴ All current and future asbestos personal-injury claims (other than workers' compensation claims) will be channeled to the Asbestos PI Trust, which will process the claims and pay all allowed claims pursuant to the Asbestos PI Trust Distribution Procedures ("TDPs").⁴⁵

26. The Asbestos PI Trust will be funded primarily by the transfer of (a) \$350 million cash on the Effective Date; (b) liquidated insurance rights with a nominal value of approximately \$950 million; (c) other unliquidated insurance rights; (d) a \$250 million promissory note (the "B&W Note"), the payment of all but \$25 million of which is subject to the condition precedent that the FAIR Act has not been enacted and made law on or before November 30, 2006 (such date, the "Trigger Date"); and (e) a \$355 million contingent payment right from MI which is

⁴¹ Rust Aff. Exhibit A.

⁴² Rust Aff. Exhibit A.

⁴³ Green Aff. ¶¶ 13, 20 & 59.

⁴⁴ Green Aff. ¶ 14; Nesser Aff. ¶ 27.

⁴⁵ Green Aff. ¶¶ 14-15; Plan §§ 3.2.6, 5.4, & 7.2; Plan Exhibits A & B.

subject to the same condition precedent as the \$250 million note.⁴⁶ The B&W Note is guaranteed by McDermott International Inc. and BWICO, and those guarantee obligations are secured by 100% of B&W's outstanding capital stock.⁴⁷

27. In exchange for the payments and assignments just described, the September 28 Plan contemplates that the Debtors and certain Non-Debtor Affiliates will receive the benefit of the Asbestos PI Channeling Injunction, under which they will be forever released from liability on account of Asbestos PI Trust Claims.⁴⁸ Further, the Debtors and the Non-Debtor Affiliates will be indemnified by the Asbestos PI Trust for any and all Asbestos PI Trust Claims that are channeled, or the September 28 Plan purports to channel, to the Asbestos PI Trust.⁴⁹

28. As mentioned above, the B&W Note and the \$355 million contingent payment right are subject to the condition precedent that the FAIR Act has not been enacted and made law on or before the Trigger Date.⁵⁰ If the FAIR Act is not made law on or before the Trigger Date, MI will be required to satisfy the contingent payment right and the B&W Note will be payable in full.⁵¹

29. If, as of the Trigger Date, the FAIR Act has been enacted and made law but is subject to a constitutional challenge, payments under the promissory note (except for a \$25 million payment due on December 1, 2007) and the contingent payment right will be suspended until the constitutional challenge to the legislation is resolved by a final, non-appealable judgment.⁵² If the FAIR Act is found to be constitutional, then the contingent payment right will not vest and will be fully canceled, and the amount payable pursuant to the \$250 million note

⁴⁶ Green Aff. ¶ 19; Zilly Aff. ¶¶ 16-17; Plan §§ 1.1.92, 3.2.6.3, 7.2.3, & 7.2.4; Plan Exhibit C at § 2.1.

⁴⁷ Green Aff. ¶ 19; Zilly Aff. ¶¶ 17; Plan Exhibit C at § 2.1.

⁴⁸ Green Aff. ¶ 14; Nesser Aff. ¶ 33; Plan § 7.2.7.

⁴⁹ Green Aff. ¶ 18; Plan § 7.2.9 & Exhibit C at § 3.2(a).

⁵⁰ Nesser Aff. ¶¶ 28-29; Zilly Aff. ¶ 18; Plan Exhibit C at § 2.1(b).

⁵¹ Id.

⁵² Id.

will be limited to the \$25 million payment due on December 1, 2007.⁵³ If the FAIR Act is found to be unconstitutional, then MI will be required to satisfy, or to cause one or more of its subsidiaries to satisfy, the contingent payment right and the promissory note will be payable in full.⁵⁴

30. If the FAIR Act has been enacted and made law on or prior to the Trigger Date, and is not subject to a constitutional challenge to its validity by January 31, 2007, the contingent payment right will not vest and will be fully canceled, and the amount payable pursuant to the \$250 million note will be limited to \$25 million due to the condition precedent not having been satisfied.⁵⁵

C. Treatment of Administrative Expense Claims, Tax Claims, and Class 1-4 Claims

31. The September 28 Plan proposes to pay Allowed (1) Administrative Expense Claims, (2) Tax Claims, (3) Priority Claims, (4) Non-Priority Secured Claims, (5) Workers' Compensation Claims, and (6) Unsecured Trade Claims in full.⁵⁶

D. Treatment of Impaired Classes

32. Because Class 5 voted to accept the September 28 Plan, each holder of an Allowed Class 5 Claim (General Unsecured Claims) will receive a Pro Rata Share of the General Unsecured Share Payment, a Pro Rata Share of \$250,000, and applicable liability insurance, if and only to the extent recoverable by the Reorganized Debtors for the payment of such claims.⁵⁷

33. Because Class 7 voted to accept the September 28 Plan, each holder of Allowed Class 7 Claims (Asbestos PD Claims and Indirect Asbestos PD Claims) will receive a Pro Rata Share of the Asbestos PD Share Payment, a Pro Rata Share of \$250,000, and proceeds of

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Plan §§ 2.1, 2.2, and 3.2.

⁵⁷ Rust Aff. Exhibit A; Plan § 3.2.5.2(a).

Asbestos PD Insurance Settlement Agreements up to \$700,000.⁵⁸ In no event will any holder of a Class 7 Claim receive more than 100% of such holder's Allowed Claim.⁵⁹

34. Holders of Class 11A Claims (Equity Interests in The Babcock & Wilcox Company) will retain their equity interests in B&W, subject to the pledge of such interests to the Asbestos PI Trust as security for the guarantee obligations relating to the B&W Note.⁶⁰

E. Treatment of Unimpaired Classes

35. Class 8 Claims (Apollo/Parks Township Claims) are not to be discharged by confirmation of the September 28 Plan.⁶¹ The legal, equitable, and contractual rights of the holders of Class 8 Claims shall be unaltered by the confirmation of the September 28 Plan, though some Class 8 Claims have been resolved by the Apollo/Parks Settlement Agreement which was approved by this Court on December 22, 2005.⁶² From and after the Effective Date, holders of Class 8 Claims, that have not otherwise reached a settlement apart from the September 28 Plan, will be permitted to assert their Claims against the Reorganized Debtors on the same terms and subject to the same defenses of the Debtors as existed without regard to the filing of the Debtors' Chapter 11 Cases.⁶³

36. Class 9 Claims (Intercompany Claims in Debtor Chain) and Class 10 Claims (Non-Debtor Affiliate Intercompany Claims) are not to be discharged by confirmation of the September 28 Plan.⁶⁴ Instead, such claims will be settled or treated in accordance with the process for settling intercompany accounts in the ordinary course which was in place

⁵⁸ Rust Aff. Exhibit A; Plan § 3.2.7.2(a).

⁵⁹ Plan § 3.2.7.2.

⁶⁰ Plan § 3.2.11.2.

⁶¹ Plan § 3.2.8.2.

⁶² Plan § 3.2.8.2; Docket # 7001.

⁶³ Plan § 3.2.8.2.

⁶⁴ Plan §§ 3.2.9.2 & 3.2.10.2.

immediately prior to the Petition Date.⁶⁵ Post-petition intercompany claims generally will be paid by the Reorganized Debtors or the Affiliates, as the case may be, in the ordinary course of their respective businesses.⁶⁶

37. Holders of Class 11B, 11C, and 11D Claims (Equity Interests in Diamond Power International, Inc., Babcock & Wilcox Construction Co., Inc., and Americon, Inc., respectively) will retain their respective equity interests.⁶⁷

V. THE SEPTEMBER 28 PLAN SATISFIES THE REQUIREMENTS OF SECTION 1129

38. This Court finds that the September 28 Plan meets the requirements of confirmation under 11 U.S.C. Section 1129.

A. *Section 1129(a)(1) & (2): The September 28 Plan and the Plan Proponents comply with the applicable provisions of the Bankruptcy Code.*

1. Section 1125 & 1128(a): Notice and Solicitation

39. On November 10, 2005, this Court approved the confirmation hearing notice, appointed Rust Consulting, Inc. as the voting agent, and provided procedures for the mailing of solicitation packages.⁶⁸

40. This Court finds that Debtors served adequate notice and satisfied due process by mailing the notice of the confirmation hearing, the Summary Disclosure Statement, balloting and other materials in the solicitation packages, as specified in this Court's November 10, 2005 order, to creditors and other parties and by publishing confirmation hearing notices in *The Wall Street Journal* (National Edition), the *Akron (Ohio) Beacon Journal*, and *The New Orleans*

⁶⁵ Plan Exhibit C at Article V.

⁶⁶ Id.

⁶⁷ Plan § 3.2.11.2.

⁶⁸ Docket # 6849 & # 6850; Confirmation Hearing Exhibit 4.

Times Picayune, the *Baton Rouge Advocate*, the *Pittsburgh Post Gazette* and the *Tarentum Valley News Dispatch*.⁶⁹

41. Subsequent to the mailing, the September 28 Plan was supplemented and modified by a series of technical modifications which do not materially affect any of the Debtors' creditors.⁷⁰ On December 22, 2005, the Plan Proponents filed the Plan Supplement.⁷¹ None of the changes reduced claimants' payment percentages or otherwise further impaired claimants' rights under the September 28 Plan.⁷² Disclosure of the technical modifications on the record at the confirmation hearing and filing of the Plan Supplement prior to the confirmation hearing constitutes due and sufficient notice thereof, and no resolicitation is necessary under the circumstances of these Chapter 11 Cases.

42. Accordingly, the September 28 Plan, as modified by the technical modifications and supplemented by the Plan Supplement, is properly before this Court and all votes shall be binding and shall be deemed cast with respect to the September 28 Plan as modified by the technical modifications and supplemented by the Plan Supplement.

2. Section 1122: Classification of Claims

43. This Court finds that the September 28 Plan adequately designates classes of claims and interests. This Court finds that each of these respective types of unsecured claims has characteristics and legal rights against the Debtors that are similar to the rights and characteristics of other claims within their own class, but different from claims in other classes.

⁶⁹ Docket # 6972.

⁷⁰ Nesser Aff. ¶¶ 35-36; Docket # 6997.

⁷¹ Docket # 6997.

⁷² Nesser Aff. ¶¶ 35-36.

44. Class 3 consists of past and pending Workers' Compensation Claims incurred in B&W's ordinary course of business.⁷³ Mr. David Keller, President and COO of B&W, stated in his affidavit, these unsecured claims are paid in the ordinary course to satisfy B&W's state-law mandated Workers' Compensation obligations, any disruption of which may threaten B&W's ability to continue in business.⁷⁴ Additionally, business reasons – namely, to maintain good working relations with B&W employees – exist for the Debtors to pay its injured employees in full, justifying separate classification of Workers' Compensation Claims.⁷⁵ This Court finds that the unsecured workers' compensation claims are dissimilar to trade or other unsecured claims, and separate classification of Class 3 Claims is appropriate.

45. Class 4 comprises thousands of claims from a broad vendor base, and the aggregate value of Allowed Class 4 Claims is approximately \$2.7 million.⁷⁶ According to Mr. Keller's affidavit, the Debtors' reputation and future business success depends on the Debtors' following through with representations made in this proceeding that the Trade Claims would be paid in full.⁷⁷ Given the small amount of the Trade Claims, and the large size of the Debtors' contracts, the loss of future contracts would result in a revenue reduction greatly in excess of the amount needed to pay Trade Claims in full. As such, this Court finds that a legitimate business justification exists for paying Trade Claims in full, and separate classification of Class 4 Claims is appropriate.

46. Class 5 consists of general unsecured claims.⁷⁸ Mr. Keller stated in his affidavit that this class included a disputed unsecured claim of the IRS, disputed miscellaneous legal

⁷³ Keller Aff. ¶ 17; Plan §§ 1.1.128 & 3.2.3.

⁷⁴ Keller Aff. ¶ 22.

⁷⁵ Keller Aff. ¶¶ 20-21.

⁷⁶ Keller Aff. ¶¶ 23-24.

⁷⁷ Keller Aff. ¶¶ 26-30.

⁷⁸ Plan § 3.2.5.

claims, and the disputed claims of excess insurance carriers for recoupment of amounts previously paid to B&W.⁷⁹ The claims are speculative in nature, highly disputed, and have questionable or no value.⁸⁰ Accordingly, based on the evidence presented, this Court finds that the estimated aggregate value of all Allowed General Unsecured Claims is not greater than \$1 million, setting aside a refinery claim asserted by Citgo which is described below.

47. B&W is also involved in a lawsuit captioned *Citgo Petroleum Corp. et al. v. McDermott Int'l Inc. et al.* No. 03 L 009812, pending in the Circuit Court of Cook County, Illinois, Law Division (“Citgo Lawsuit”).⁸¹ The plaintiffs to the Citgo lawsuit allege that a pipe fitting manufactured and sold by B&W in approximately 1981-1982 was defectively and negligently manufactured, and as a result, ruptured on August 14, 2001, causing a fire and resulting damage in an Illinois refinery.⁸² However, this lawsuit does not affect the value ascribed to Class 5 Claims because the parties have entered into a Joint Stipulation and Accord on December 21, 2005, which, among other things, treats the claims asserted in the Citgo Lawsuit as Administrative Claims under the September 28 Plan.⁸³

48. This Court finds that it is reasonable and fair to pay Class 5 Claims at a payment percentage similar to that of other classes of unsecured claims (Classes 6 and 7) but at a lesser amount than Class 3 and Class 4. The degree of “discrimination” between the September 28 Plan’s treatment of Class 3 and Class 4 Claims vis-à-vis the treatment of Class 5 Claims is not disproportionate because there is no business need to pay the disputed and unliquidated Class 5 Claims in full. This Court finds that the separate classification of Class 5 Claims is appropriate.

⁷⁹ Keller Aff. ¶ 31.

⁸⁰ Keller Aff. ¶¶ 32-34.

⁸¹ Keller Aff. ¶ 35.

⁸² Id.

⁸³ Id.; Docket # 7002.

49. Class 6 consists of all Asbestos PI Trust Claims which are unsecured claims based on personal injuries allegedly caused by exposure to asbestos.⁸⁴ All Class 6 Claims have the same or similar legal status in relation to the assets of the Debtors, and, accordingly, they are all appropriately handled by the Asbestos PI Trust and paid the same pro rata payment percentage as set forth in the TDPs. Moreover, it is appropriate that Class 6 Claims not be paid in full, because the unrebutted testimony of Mr. Keller proved that B&W's customers and suppliers have no real interest in whether asbestos personal injury claims are paid in full.⁸⁵ This Court finds that the classification of Asbestos PI Trust Claims in Class 6 is appropriate.

50. Class 7 consists of all Asbestos PD Claims and Indirect Asbestos PD Claims which are unsecured claims based on property damage allegedly caused by exposure to asbestos.⁸⁶ All Class 7 Claims have the same or similar legal status in relation to the assets of the Debtors, and, accordingly, they are all appropriately paid a pro rata share of the Asbestos PD Share Payment, a pro rata share of \$250,000, and proceeds of Asbestos PD Insurance Settlement Agreements up to \$700,000.⁸⁷ All of the Class 7 Claims have been settled for a total amount of \$678,744.⁸⁸ Accordingly, this Court finds that the estimated value of the Asbestos PD Claims is not greater than \$700,000 and that classification of Asbestos PD Claims and Indirect Asbestos PD Claims in Class 7 is appropriate.

51. Class 8 consists of all claims allegedly caused by nuclear radiation or nuclear contamination from the operations of the Apollo Facility and Parks Township Facility.⁸⁹ Accordingly, the classification of the Apollo/Parks Township Claims in Class 8 is appropriate.

⁸⁴ Plan § 3.2.6.

⁸⁵ Keller Aff. ¶ 40.

⁸⁶ Plan § 3.2.7.

⁸⁷ Plan § 3.2.7.2.

⁸⁸ Keller Aff. ¶ 42.

⁸⁹ Plan §§ 1.1.8 and 3.2.8.

3. Sections 1123(a)(1), (2), (3), & (4): Contents of the Plan -- Classes of Claims

52. The September 28 Plan appropriately designates and describes the treatment of each class of claims and equity interests, in compliance with Sections 1123(a)(1), (2), (3), & (4) of the Bankruptcy Code. The September 28 Plan provides for the following unimpaired classes of claims, which are deemed to have accepted, and are not entitled to vote on, the September 28 Plan: Class 1 - Priority Claims; Class 2 - Non-Priority Secured Claims; Class 3 - Workers' Compensation Claims; Class 4 - Unsecured Trade Claims; Class 8 - Apollo/Parks Township Claims; Class 9 - Intercompany Company Claims in Debtor Chain; Class 10 - Non-Debtor Affiliate Intercompany Claims; Class 11B - Equity Interest in Diamond Power International, Inc.; Class 11C - Equity Interest in Babcock & Wilcox Construction Co., Inc.; and Class 11D - Equity Interest in Americon, Inc.⁹⁰

53. The September 28 Plan provides for, and adequately describes the treatment of, the following classes of impaired claims and interests: Class 5 - General Unsecured Claims; Class 6 - Asbestos PI Trust Claims; Class 7 - Asbestos Property Damage Claims; and Class 11A - Equity Interests in The Babcock & Wilcox Company.⁹¹

54. Within each class of claims, the September 28 Plan provides for the same treatment for each claim or equity interest in a particular class.⁹²

⁹⁰ Plan § 3.1; 11 U.S.C. §1126.

⁹¹ Plan §§ 3.2.5, 3.2.6, 3.2.7, 3.2.11, 5.3, 5.4, & 5.5.

⁹² Id.

4. Section 1123(a)(5): Contents of the plan -- Adequate Means of Implementation

55. Section 1123(a)(5) requires that a plan provide adequate means for its implementation.⁹³ As discussed above, the September 28 Plan provides for the creation of the Asbestos PI Trust, which will be funded by, among other things, assignment of rights to the proceeds of B&W's insurance coverage.⁹⁴ The insurance coverage is substantial, and has been liquidated for approximately \$950 million for the benefit of the Asbestos PI Trust.⁹⁵ The September 28 Plan provides for the implementation of Asbestos PI Trust Distribution Procedures governing the payment of Asbestos PI Trust Claims.⁹⁶ The other implementation procedures described in detail in the September 28 Plan are more than adequate to satisfy the requirements of Section 1123(a)(5).⁹⁷

5. Sections 1123(a)(6) & (7): Contents of the plan -- Corporate Governance of the Debtors

56. The Debtors have or will amend their Certificates of Incorporation to prohibit the issuance of nonvoting equity securities and provide for the appropriate distribution of voting power among the classes of securities.⁹⁸

57. Further, the Plan Proponents have adequately disclosed the Asbestos PI Trust Trustees, who were selected as a result of a careful process entailing, among other things, interviewing dozens of candidates.⁹⁹ The proposed trustees are qualified, public-service oriented

⁹³ 11 U.S.C. §1123(a)(5).

⁹⁴ Green Aff. ¶¶ 14-19; Zilly Aff. ¶ 16; Plan § 7.2.3; Plan Exhibit C at § 2.1.

⁹⁵ Zilly Aff. ¶ 13.

⁹⁶ Plan § 7.2; Plan Exhibits A & B.

⁹⁷ See Plan Article 7.

⁹⁸ Keller Aff. ¶ 57

⁹⁹ Docket # 5138; Green Aff. ¶ 58; Plan § 7.2.2.

people, and their appointment to and continuance in the position of trustees is consistent with the interests of creditors, equity security holders and public policy.¹⁰⁰

B. Section 1129(a)(3): The September 28 Plan has been proposed in good faith and not by any means forbidden by law.

58. Section 1129(a)(3) requires that a plan be proposed in good faith and not by any means forbidden by law.¹⁰¹ No one has objected to the September 28 Plan on the basis that it was not proposed in good faith. The September 28 Plan is a result of extensive arm's-length negotiations.¹⁰²

59. The Debtors' bankruptcy case was filed on February 22, 2000. John T. Nesser, III, general counsel of MII, stated in his affidavit that the Debtors pursued this Chapter 11 case along a dual track: settling with various constituencies, while also pursuing a litigation track.¹⁰³ The litigation track included: (1) the so-called "Litigation Protocol," an aggressive proposal for contesting asbestos personal-injury claims on grounds that had not been litigated by B&W pre-petition; (2) omnibus objections to asbestos claims that purportedly had been settled pre-petition; (3) the transfers litigation in which the ACC and FCR sought to compel B&W's parent companies to return in excess of \$600 million of assets that allegedly had been improperly transferred out of B&W in a 1998 corporate restructuring; and (4) insurance-coverage litigation including a declaratory judgment action brought by certain insurers before Judge Vance.¹⁰⁴ The ACC and the FCR vigorously opposed B&W's Litigation Protocol and aggressively litigated the

¹⁰⁰ Green Aff. ¶¶ 54-58.

¹⁰¹ 11 U.S.C. § 1129(a)(3).

¹⁰² For a discussion of the negotiations leading to the filing of the September 28 Plan, see Green Aff. ¶¶ 21-40, 50.

¹⁰³ Nesser Aff. ¶ 10.

¹⁰⁴ Id.

fraudulent transfers case.¹⁰⁵ B&W viewed it as essential to litigate the fraudulent transfers allegations, and also the insurance coverage action, to remove two impediments to settlement.¹⁰⁶

60. Negotiations began almost immediately after the Chapter 11 filing and continued as the litigated issues ran their course.¹⁰⁷ Although settlement offers were made as early as the summer of 2000, the parties remained far apart.¹⁰⁸ The ACC and FCR on the one hand, and B&W on the other hand, took strongly divergent positions on the value of current and future asbestos claims and on the merit of the transfers litigation.¹⁰⁹ By 2001, the negotiations were stymied, although they continued with the participation of McGovern.¹¹⁰

61. A confluence of events in the first half of 2002 broke the impasse, and in August 2002, the parties announced an agreement in principle, which ultimately led to the Third Amended Plan.¹¹¹ Although this Court eventually recommended confirmation of the Third Amended Plan in November 2005, various parties in interest objected to and appealed from this Court's recommendation.¹¹² Subsequent to the filing of the objections and appeals, the Plan Proponents continued their settlement discussions with objecting insurers and, in January 2005, began discussions among themselves of alternative resolutions to the Chapter 11 Cases.¹¹³ Overall, and as testified by key participants such as Mr. Nesser and Mr. Green, the negotiations were at arm's length, difficult, contentious, protracted, and characterized at times by impasse.¹¹⁴

¹⁰⁵ Green Aff. ¶ 22; Nesser Aff. ¶ 10.

¹⁰⁶ Nesser Aff. ¶ 10.

¹⁰⁷ *Supra* at note 102.

¹⁰⁸ *Id.*

¹⁰⁹ Green Aff. ¶ 24.

¹¹⁰ Green Aff. ¶ 22.

¹¹¹ Green Aff. ¶ 25.

¹¹² Green Aff. ¶¶ 28-29.

¹¹³ Green Aff. ¶ 33.

¹¹⁴ *Supra* at note 102.

62. Rather than indicate that good faith is lacking, the case history indicates that negotiations with constituencies were protracted, extensive and hard fought. A great deal of negotiation and litigation took place before an agreement-in-principle could be reached with any constituency. Ultimately, the Debtors were able to craft a plan agreeable to the ACC and the FCR, which represent the major creditors in the Chapter 11 Cases. Rather than indicate a lack of good faith, the Debtors' actions indicate a dogged determination to settle with its major constituencies on the best terms possible, and under a plan capable of confirmation.

63. This Court finds that the negotiations were conducted in good faith and that the resulting September 28 Plan has been proposed in good faith and not by any means forbidden by law, in accordance with 11 U.S.C. Section 1129(a)(3).

C. Section 1129(a)(4): Reasonableness of payments

64. All payments by the Debtors for costs and services to the estate in connection with the Debtors' Chapter 11 Cases to representatives, consultants, professionals and others, the approval of which is required under the Bankruptcy Code, either have previously been approved by this Court or remain subject to approval by this Court as reasonable, and were adequately disclosed in the September 28 Plan and the Disclosure Statement or have been disclosed prior to the Confirmation Hearing. Therefore, this Court finds the September 28 Plan complies with Section 1129(a)(4).¹¹⁵

D. Section 1129(a)(5): Disclosure of Directors, Officers, Etc.

65. The Plan Proponents have made disclosures required by Section 1129(a)(5). The Plan Proponents have identified the officers and directors who will serve the reorganized Debtors, and the appointment of the officers and directors is consistent with the interests of the

¹¹⁵ Plan § 9.6.

creditors, equity security holders, and public policy.¹¹⁶ The Debtors have also identified the individuals who will serve as Trustees of the Asbestos PI Trust, as well as their affiliations.¹¹⁷ As required by Section 1129(a)(5)(B), the Plan Proponents have disclosed any insiders who will be employed or retained by the Debtors, as well as their compensation.¹¹⁸

E. Section 1129(a)(6): Rate approvals

66. The Debtors' current business does not involve the establishment of rates over which any regulatory commission has or will have jurisdiction after confirmation of the September 28 Plan.

F. Sections 1129(a)(7): Best Interests of Creditors

67. Section 1129(a)(7) requires that each holder of an impaired claim or interest either has accepted the September 28 Plan, or will receive an amount equal to or greater than that which would be received in a Chapter 7 liquidation.¹¹⁹ In connection with the Confirmation Hearing, the Plan Proponents submitted an affidavit from Pamela Zilly, an investment banker with the Blackstone Group, L.P.¹²⁰ In her affidavit, Ms. Zilly stated that the total assets available under the September 28 Plan for payment of claims are between \$1.376 billion and \$1.956 billion.¹²¹ In contrast, the Chapter 7 liquidation value of the Debtors' assets are between \$833 million to \$1.223 billion.¹²² A greater return to creditors under the September 28 Plan is possible because of the contributions of MII and the Non-Debtor Affiliates, including a \$355 million

¹¹⁶ Docket # 5138

¹¹⁷ *Supra* at ¶ 57.

¹¹⁸ Docket # 5138.

¹¹⁹ 11 U.S.C. § 1129(a)(7).

¹²⁰ Confirmation Hearing Exhibit 6.

¹²¹ Zilly Aff. ¶ 19.

¹²² Zilly Aff. ¶ 15.

contingent payment right and their rights as co-insureds under the insurance policies that provide coverage for asbestos claims.¹²³

68. Therefore, this Court finds that under the September 28 Plan, each impaired class will receive or retain a claim or interest in property of value that is not less than the amount they would have received or retained in a Chapter 7 liquidation of the Debtors.

G. Section 1129(a)(8): Acceptance by Impaired Classes or Deemed Acceptance for Unimpaired Classes

69. Pursuant to balloting procedures and voting deadlines established by this Court's orders, all impaired classes and interests were given the opportunity to vote.¹²⁴ All impaired classes of claims have voted to accept the September 28 Plan by casting votes in favor of the September 28 Plan exceeding two-thirds of the amount of voting claims and one-half the number of voting claims in each class required for acceptance under 11 U.S.C. Section 1126(c).¹²⁵

70. Class 5 voted in favor of the September 28 Plan.¹²⁶

71. Class 6 consists of Asbestos PI Trust Claims, including both "settled" and unliquidated Asbestos PI Claims, as well as Indirect Asbestos PI Claims.¹²⁷ The holders of Class 6 claims voted in favor of the September 28 Plan, 91.46% by number and 89.6% by dollar value.¹²⁸

72. All holders of Class 7 Asbestos Property Damage ("PD") Claims voted in favor of the September 28 Plan.¹²⁹

¹²³ Zilly Aff. ¶¶ 16-17.

¹²⁴ Docket # 6850 & # 6972; Rust Aff. generally.

¹²⁵ Rust Aff. Exhibit A.

¹²⁶ Rust Aff. Exhibit A.

¹²⁷ Plan §§ 1.1.22, 1.1.27, 1.1.84, & 3.2.6.

¹²⁸ Rust Aff. Exhibit A.

¹²⁹ Rust Aff. Exhibit A.

73. Class 11A consists of Equity Interests in B&W and is comprised of BWICO, the direct parent of B&W and the holder of all of its equity.¹³⁰ BWICO voted in favor of the September 28 Plan, and accordingly, Class 11A has approved the September 28 Plan by a vote exceeding two-thirds of the amount of shares who are entitled to vote for the September 28 Plan, as required by 11 U.S.C. Section 1126(d).¹³¹

74. All remaining class of claims are not impaired under the September 28 Plan, and therefore those classes are conclusively presumed to have accepted the September 28 Plan pursuant to 11 U.S.C. Section 1126(f).¹³²

H. Section 1129(a)(9): Treatment of Priority Claims

75. The September 28 Plan provides for the treatment of Administrative Expense Claims, Priority Tax Claims and Claims entitled to priority pursuant to Sections 507(a)(3)-(8) in the manner required by Section 1129(a)(9).¹³³

I. Section 1129(a)(10): Acceptance by Non-Insider Class

76. The September 28 Plan has been accepted by all classes of impaired claims that are entitled to vote, including Classes 5, 6, & 7, as determined without including any acceptance of the September 28 Plan by any insider.¹³⁴

J. Section 1129(a)(11): Confirmation Unlikely Followed By Liquidation or Further Reorganization

77. B&W President David Keller stated in his uncontested affidavit that B&W's business today is very healthy and generating substantial revenue, income, and cash flow.¹³⁵

¹³⁰ Plan § 3.2.11.

¹³¹ Rust Aff. Exhibit A.

¹³² Plan § 3.1.

¹³³ Plan Article 3.

¹³⁴ Rust Aff. Exhibit A.

¹³⁵ Keller Aff. ¶ 46.

Further, B&W's business plan and its business prospects post-effective date are also strong.¹³⁶ B&W's management explained that its prospects for obtaining exit financing are very good and its business prospects are better than they have ever been during the pendency of the Chapter 11 Cases.¹³⁷ According to Mr. Keller, B&W will have adequate exit financing and very good prospects for winning and delivering on contracts.¹³⁸ B&W will have approximately \$476.4 million cash and an exit financing package consisting of a \$650 million senior secured credit facility.¹³⁹ Mr. Keller also asserted that he "considers it unlikely that a reorganized B&W will face future financial distress that would necessitate a further reorganization."¹⁴⁰

78. Accordingly, and in satisfaction of Section 1129(a)(11), this Court finds that confirmation of the September 28 Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors.

K. Section 1129(a)(12): Fees under 28 U.S.C. § 1930

79. All fees payable under 28 U.S.C. § 1390, if any, either have been paid or will be paid on the Effective Date pursuant to the September 28 Plan.¹⁴¹

L. Section 1129(a)(13): Retiree Benefits to Continue

80. The September 28 Plan provides for the continuation after its Effective Date of payment of all retiree benefits, as that term is defined in 11 U.S.C. § 1114, at the level established pursuant to subsection (e)(1)(B) or (g) of 11 U.S.C. § 1114, at any time prior to

¹³⁶ Keller Aff. ¶ 47.

¹³⁷ Keller Aff. ¶¶ 47-49.

¹³⁸ Keller Aff. ¶¶ 47-48.

¹³⁹ Keller Aff. ¶¶ 46-47.

¹⁴⁰ Keller Aff. ¶ 54.

¹⁴¹ Plan § 11.1.

confirmation of the September 28 Plan, for the duration of the period the debtor has obligated itself to provide such benefits.¹⁴²

M. Section 1129(d): Principal Purposes Not Tax Avoidance

81. No party in interest, including any governmental unit or taxing authority, has requested this Court to deny confirmation of the September 28 Plan on grounds that the principal purpose of the September 28 Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933 and the primary purpose of the September 28 Plan is not such avoidance. Accordingly, the September 28 Plan satisfies the requirements of Section 1129(d).

VI. THE SEPTEMBER 28 PLAN'S DISCHARGE AND INJUNCTIVE PROVISIONS SATISFY THE REQUIREMENTS OF THE BANKRUPTCY CODE.

82. The centerpiece of the September 28 Plan is the establishment of an Asbestos Personal Injury Trust (the "Trust") to resolve all asbestos-related liabilities of the Debtors (other than workers' compensation claims).¹⁴³ The September 28 Plan provides that an injunction will be entered by the District Court, pursuant to Section 524(g) of the Bankruptcy Code, which will channel all asbestos-related claims arising from operations of the Debtors (other than workers' compensation claims) to the Trust.¹⁴⁴ This Court finds and concludes that the September 28 Plan has satisfied all requirements of Section 524(g).

83. The September 28 Plan also provides that the Asbestos PI Channeling Injunction, an Asbestos PD Channeling Injunction, and an Asbestos Insurance Entity Injunction will be issued under Section 105(a). Case law sets forth several factors for consideration prior to

¹⁴² Plan §§ 8.3 & 11.9

¹⁴³ Green Aff. ¶ 14.

¹⁴⁴ Id.

issuance of a third-party injunction.¹⁴⁵ The satisfaction of each factor in this case will be discussed in Section VI(B) below.

A. *The September 28 Plan complies with all requirements of §524(g) of the Bankruptcy Code.*

1. Section 524(g)(2)(B)(i)(I): Trust Assumes Debtors' Asbestos Liabilities

84. Under the September 28 Plan, the sole recourse of a holder of a present or future Asbestos PI Trust Claim will be to the Trust, pursuant to the provisions of the Asbestos PI Channeling Injunction and the Asbestos PI Trust Distribution Procedures (the "TDPs").¹⁴⁶ This Court finds that Section 524(g)(2)(B)(i)(I) has been satisfied.

2. Section 524(g)(2)(B)(i)(II): Trust Funded By Debtors' Securities And Obligation To Make Future Payments

85. The Trust will be funded by, among other things, securities of the Debtors, in the form of the B&W Note, which obligates B&W to make future payments to the Asbestos PI Trust.¹⁴⁷ This Court finds that Section 524(g)(2)(B)(i)(II) has been satisfied.

3. Section 524(g)(2)(B)(i)(III): Trust Entitled To Own Majority Of Voting Shares If Specified Contingencies Occur

86. Under the September 28 Plan, the Trust will be entitled to own a majority of the voting shares of the Debtors in the event that a specified contingency occurs – namely, if (i) B&W defaults on the B&W Note and (ii) MII and BWICO do not satisfy their guarantee set

¹⁴⁵ *In re Dow Corning Corp.*, 280 F.3d 648, 658 (6th Cir. 2002), citing *In re A.H. Robins Co.*, 880 F.2d 694, 701-702 (4th Cir. 1989); *In re Johns-Manville*, 837 F.2d 89, 92-94 (2d Cir. 1988); *In re Continental Airlines*, 203 F.3d at 214; *In re Zale Corp.*, 62 F.3d 746 (5th Cir. 1995).

¹⁴⁶ Green Aff. ¶¶ 14-15; Plan § 7.2.5.

¹⁴⁷ Green Aff. ¶ 19; Plan § 7.2.3; see 11 U.S.C. §101(49) (defining "security" as including a note).

forth in the Pledge and Security Agreement.¹⁴⁸ This Court finds that Section 524(g)(2)(B)(i)(III) has been satisfied.

4. Section 524(g)(2)(B)(i)(IV): Trust Uses Its Assets To Pay Asbestos Claims And Demands

87. Under the September 28 Plan, the Trust is to use its assets to pay present and future Asbestos PI Trust Claims.¹⁴⁹ This Court finds that Section 524(g)(2)(B)(i)(IV) has been satisfied.

5. Section 524(g)(2)(B)(ii)(I): Debtors Will Be Subject To Substantial Future Demands For Payment Arising From Their Asbestos-Related Activities

88. According to the uncontested affidavit of the FCR, the Debtors will be subject to substantial future demands for asbestos-related claims.¹⁵⁰ The FCR based his conclusions on his and his team's due diligence and certain expert reports.¹⁵¹ This Court finds that Section 524(g)(2)(B)(ii)(I) has been satisfied.

6. Section 524(g)(2)(B)(ii)(II): Actual Amounts, Numbers, And Timing Of Such Future Demands Cannot Be Determined

89. According to the uncontested affidavits of the FCR and Mr. Nesser, the actual amount, numbers, and timing of future asbestos-related demands cannot be determined.¹⁵² This Court finds that Section 524(g)(2)(B)(ii)(II) has been satisfied.

¹⁴⁸ Green Aff. ¶ 19; Nesser Aff. ¶ 32; Plan Exhibit C at § 2.1; Exhibits A & B to Plan Exhibit C.

¹⁴⁹ Green Aff. ¶¶ 14-19; Plan § 7.2.1.

¹⁵⁰ Green Aff. ¶ 18.

¹⁵¹ Green Aff. ¶¶ 9-12.

¹⁵² Green Aff. ¶ 24; Nesser Aff. ¶ 7.

7. Section 524(g)(2)(B)(ii)(III): Pursuit Of Asbestos PI Trust Claims Outside The Plan Will Threaten Plan's Purpose To Deal Equitably With Asbestos Claims And Future Demands

90. Allowing Asbestos PI Trust Claims to be brought in the tort system and outside of the TDPs would threaten the September 28 Plan's purpose of dealing equitably with present claims and future demands.¹⁵³ Outside litigation would create the possibility of unpredictable liability judgments against the Asbestos PI Trust, which could lead to inequitable treatment of present claims and future demands.¹⁵⁴ This Court finds that Section 524(g)(2)(B)(ii)(III) has been satisfied.

8. Section 524(g)(2)(B)(ii)(IV)(aa): Terms Of Channeling Injunction Are Set Out In Plan And Disclosure Statement

91. The terms of the Asbestos PI Channeling Injunction are set out in Sections 1.1.22 and 3.2.6 of the September 28 Plan and pages 25-26 of the Summary Disclosure Statement. This Court finds that Section 524(g)(2)(B)(ii)(IV)(aa) has been satisfied.

9. Section 524(g)(2)(B)(ii)(IV)(bb): Class 6 Claims Voted In Favor Of The Plan By At Least 75% Of Those Voting

92. The holders of Class 6 Claims (Asbestos PI Trust Claims) voted in favor of the September 28 Plan, 91.46% by number and 89.6% by dollar value.¹⁵⁵ Therefore, holders of Asbestos PI Trust Claims voted in favor of the September 28 Plan by amounts and numbers sufficient to satisfy the requirements of this section. This Court finds that Section 524(g)(2)(B)(ii)(IV)(bb) has been satisfied.

¹⁵³ Green Aff. ¶ 18.

¹⁵⁴ Id.

¹⁵⁵ Rust Aff. Exhibit A.

10. Section 524(g)(2)(B)(ii)(V): Trust Will Operate Through Mechanisms That Provide Reasonable Assurance That It Will Value, And Be In A Financial Position To Pay, Present Claims And Future Demands In Substantially The Same Manner

93. Sections 3.2.6.2, 5.4, and 7.2.1 of the September 28 Plan provide for the Trust to process and allow or disallow claims in accordance with the provisions of the TDPs. The Trust will be funded primarily by: (i) \$350 million cash on the Effective Date; (ii) approximately \$950 million of already liquidated insurance rights; (iii) unliquidated insurance rights; (iv) a \$250 million promissory note (the “B&W Note”), the payment of all but \$25 million of which is subject to the condition precedent that the FAIR Act has not been enacted and made law on or before November 30, 2006 (such date, the “Trigger Date”); and (v) a \$355 million contingent payment right subject to the same condition precedent as the \$250 million note.¹⁵⁶

94. Further the TDPs provide a mechanism for the Trust to process claims and determine the amount, if any, that will be paid.¹⁵⁷ The TDPs establish structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and value of Asbestos PI Trust Claims so that similar claims will be paid in substantially the same manner.¹⁵⁸

95. The FCR has asserted that the TDPs’ exposure and disease criteria are better and more precise than those in many jurisdictions in the tort system, and the TDPs are one of the first to introduce requirements of significant occupational exposure requirements and a diagnosis

¹⁵⁶ Zilly Aff. ¶¶ 16-17.

¹⁵⁷ Green Aff. ¶¶ 15-17.

¹⁵⁸ Id.; Plan Exhibit B at §§ IV & V.

from a physician of an asbestos-related disease.¹⁵⁹ The FCR has also stated that the TDPs represent a significant improvement and step forward in the whole of asbestos litigation.¹⁶⁰

96. This Court finds that Section 524(g)(2)(B)(ii)(V) has been satisfied because the September 28 Plan provides sufficient funding to the Trust, and the Trust will be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.

11. Section 524(g)(4)(A): The Channeling Injunction Is Valid And Enforceable Against All Entities That It Addresses

97. In accordance with Section 524(g)(4)(A), the Asbestos PI Channeling Injunction shall be valid and enforceable against all entities that it addresses since the Asbestos Protected Parties and Settling Asbestos Insurance Entities are all appropriate third parties eligible for protection pursuant to Section 524(g)(4)(A)(ii).

12. Section 524(g)(4)(B)(i): Appointment Of Future Claimants' Representative

98. Section 524(g)(4)(B)(i) requires that the court appoint a legal representative to protect the rights of future claim holders. This Court has appointed Eric D. Green as the legal representative for the future asbestos-related claims holders.¹⁶¹

99. Mr. Green is well experienced in these kinds of matters, has engaged in numerous discussions with the Debtors regarding the treatment of future claimants in the September 28 Plan, and has taken actions needed to protect the rights of future claimants.¹⁶² Among other things, Mr. Green has retained Dr. Thomas Florence and other advisors (i) to analyze the

¹⁵⁹ Green Aff. ¶ 53.

¹⁶⁰ Id.

¹⁶¹ Docket # 1113.

¹⁶² Green Aff. generally.

Debtors' businesses, capital structures, asbestos liabilities, pre-petition asbestos settlement history, litigation history, currently pending claims, potential exposure to future claims, and the value of those future claims; (ii) to research the availability of insurance to pay claims; and (iii) to provide claims projections and trust distribution analysis.¹⁶³ All of this expert knowledge supports Mr. Green's informed and experienced opinion to support the September 28 Plan as a Plan Proponent. This Court finds that the requirements of Section 524(g)(4)(B)(i) have been satisfied.

13. Section 524(g)(4)(B)(ii): Injunction Is Fair And Equitable In Light Of Benefits Provided

100. Section 524(g)(4)(B)(ii) requires that this Court determine that granting the benefits of the channeling injunction to the Debtors and any third parties is fair and equitable with respect to future demands in light of the benefits provided by the Debtors or such third parties. As the representative of holders of such future demands, the FCR stated in his uncontested affidavit that the September 28 Plan is fair and equitable to holders of future demands in light of the benefits provided and to be provided by the beneficiaries of the channeling injunction.¹⁶⁴ This Court finds that the requirements of Section 524(g)(4)(B)(ii) have been satisfied.

B. The September 28 Plan also satisfies the requirements for the issuance of a third-party injunction under Section 105.

1. Identity of Interest

101. This Court finds that an identity of interest exists between the Debtors and the Asbestos Protected Parties. The Asbestos Protected Parties include MII, the Debtors' ultimate

¹⁶³ Green Aff. ¶¶ 9-10.

¹⁶⁴ Green Aff. ¶ 20.

parent, MI, the parent of BWICO, BWICO, the parent of B&W, Non-Debtor Subsidiaries of the Debtors, and Non-Debtor Affiliates of the Debtors.¹⁶⁵ Under numerous insurance policies, B&W and all “wholly owned, or financially controlled or affiliated companies” are named insureds.¹⁶⁶ Various lawsuits filed against the Debtors also name MII as a party for claims derivative of B&W’s alleged asbestos liability.¹⁶⁷ MII and MI are making substantial contributions to the September 28 Plan, and their willingness to do so is dependent upon a final resolution of liability for the derivative asbestos liability claims.¹⁶⁸

2. Substantial Contribution

102. On the Plan Effective Date, (i) MII and its affiliates will cause B&W to pay the Trust \$350 million cash, (ii) MII and its affiliates will assign to the Trust their insurance rights under the Subject Asbestos Insurance Policies, (iii) B&W will issue a \$250 million promissory note and MI will provide a contingent payment right in the amount of \$355 million to the Trust, both of which (except for \$25 million payable under the B&W Note) are subject to the condition precedent that the FAIR Act has not been enacted and made law on or before November 30, 2006, and (iv) MII and BWICO will guarantee B&W’s obligations under the B&W Note.¹⁶⁹

103. MII’s and its affiliates’ contributions to the Trust are substantial. According to Ms. Zilly’s affidavit, the various contributions range between \$1.376 billion and \$1.956 billion, the difference depending on whether the FAIR Act contingency occurs.¹⁷⁰

¹⁶⁵ Nesser Aff. ¶ 33; Plan § 1.1.30.

¹⁶⁶ Nesser Aff. ¶ 33.

¹⁶⁷ Id.

¹⁶⁸ Id.

¹⁶⁹ Green Aff. ¶ 19; Zilly Aff. ¶¶ 16-17.

¹⁷⁰ Zilly Aff. ¶ 19.

3. Essential to Reorganization

104. According to the affidavits of Mr. Nesser, over the past few decades, B&W was subject to voluminous personal-injury claims alleging exposure to asbestos from B&W boilers.¹⁷¹ During the 1980s and 1990s, B&W carried out a settlement strategy in which it consensually resolved all claims by claimants who made a minimal showing of alleged exposure and injury.¹⁷² A total of more than \$1.5 billion was paid to claimants by B&W's insurers, resolving more than 300,000 pre-petition claims.¹⁷³ By late 1999, however, there was an increase in both the number and the cost of asbestos claims.¹⁷⁴ By 1999, the number of claims filed against B&W had exceeded 400,000.¹⁷⁵ By the claims bar date, approximately 222,000 primary asbestos-related personal injury and 60,000 secondary exposure proofs of claim were filed in the Chapter 11 Cases.¹⁷⁶

105. The Debtors are likely to be subject to substantial future demands arising out of the same or similar conduct or events that gave rise to the Asbestos PI Trust Claims and Asbestos PD Claims, addressed by the various asbestos channeling injunctions.¹⁷⁷ Pursuit of these demands outside of the September 28 Plan procedures and the TDPs will threaten the September 28 Plan's purpose to deal equitably with Asbestos PI and PD Claims.¹⁷⁸

106. This Court finds that the Asbestos Insurance Entity Injunction, the Asbestos PI Channeling Injunction, and the Asbestos PD Channeling Injunction are essential to the September 28 Plan and reorganization of the Debtors.

¹⁷¹ Nesser Aff. ¶ 7.

¹⁷² Id.

¹⁷³ Id.

¹⁷⁴ Id.

¹⁷⁵ Id.

¹⁷⁶ Id.

¹⁷⁷ Green Aff. ¶ 18.

¹⁷⁸ Id.

4. Acceptance of the Plan by an Impacted Class

107. The September 28 Plan provides for the payment of the Asbestos PI Claims as Class 6 Claims, and for the payment of Asbestos PD Claims as Class 7 Claims.¹⁷⁹

108. The holders of Class 6 Claims voted in favor of the September 28 Plan 91.46% by number and 89.6% by dollar value.¹⁸⁰

109. All holders of Class 7 Claims voted in favor of the September 28 Plan.¹⁸¹

110. This Court finds that the requirement of acceptance by the impacted class has been met.

5. Substantially Full Payment to Impacted Classes

111. The September 28 Plan provides a mechanism to pay for all, or substantially all, of the class or classes affected by the injunction.¹⁸² Class 6 Claims will be processed and paid by the Trust pursuant to the Asbestos PI Trust Agreement and TDPs.¹⁸³ Class 7 Claims that are allowed will be paid pursuant to Sections 3.2.7.2 and 5.5 of the September 28 Plan.

6. Full Payment of Nonsettling Claimants

112. No evidence was put forth as to claimants who have not agreed to settle asbestos-related claims, or the payments to be made to these claimants. The September 28 Plan proposes

¹⁷⁹ Plan §§ 3.2.6 & 3.2.7.

¹⁸⁰ Rust Aff. Exhibit A.

¹⁸¹ Id.

¹⁸² Green Aff. ¶¶ 14-17, 41-52; Plan §§ 5.5 & 7.2.

¹⁸³ Green Aff. ¶ 14; Plan § 7.2.1; Plan Exhibits A & B.

to resolve all asbestos-related claims, and to pay those claims in accordance with the TDPs.¹⁸⁴

To the extent claims are allowed, they will be paid in full in accordance with the TDPs.¹⁸⁵

VII. INSURANCE-RELATED FINDINGS

113. The September 28 Plan provides that this Court shall make certain insurance-related findings of fact and/or conclusions of law in connection with, and as a condition to, confirmation of the September 28 Plan. In support of those specific findings which are listed in paragraphs 118 below, this Court enters the following findings.

114. On the Effective Date, pursuant to Section 7.2.4 of the September 28 Plan, the Debtors and Insurance Contributors will assign their Asbestos Insurance Rights to the Asbestos PI Trust, including their rights to receive insurance proceeds under Asbestos PI Insurance Settlement Agreements.¹⁸⁶ The September 28 Plan does not assign the insurance policies themselves, but rather assigns the rights under the policies, which does not implicate any anti-policy-assignment clause.¹⁸⁷

115. The assignment of the right to collect on B&W's coverage obligations does not materially increase the insurers' risk because the asbestos-related exposures and injuries relevant to triggering the insurers' coverage obligations for the Asbestos PI Trust Claims have already taken place, many years ago. Thus, the coverage obligations of the relevant insurance policies have already attached. Moreover, the TDPs provided for in the September 28 Plan apply criteria that are stricter than the pre-petition criteria that the Debtors used historically.¹⁸⁸

116. The filing of B&W's bankruptcy petition received widespread publicity. In addition, B&W specifically gave notice of the filing to the insurers by sending individual letters

¹⁸⁴ Id.

¹⁸⁵ Id.

¹⁸⁶ Plan § 7.4.2; Plan Supplement Item 1.

¹⁸⁷ Id.

¹⁸⁸ Green Aff. ¶ 53.

to each insurance company remaining in the insurance coverage block. The Debtors also kept the excess and primary insurers apprised of the status of the bankruptcy proceeding and plan of reorganization negotiations.

117. Certain Asbestos Insurance Entities have entered into settlement agreements with the Debtors, which have been approved by this Court by Final Order and accompanied by Findings of Fact and Conclusions of Law, all of which are incorporated herein. Those approved settlements satisfy the requirements for such settling insurers to be Settling Asbestos Insurance Entities as defined in the September 28 Plan because such settlement agreements: (i) are sufficiently comprehensive to warrant treatment under Section 524(g) of the Bankruptcy Code in the case of Asbestos PI Trust Claims or to warrant treatment under Section 105 of the Bankruptcy Code in the case of Class 7 Claims, and (ii) such settling insurers have been listed on the schedule of Settling Asbestos Insurance Entities filed with this Court on December 22, 2005, by the Plan Proponents prior to the Confirmation Date.¹⁸⁹

118. Certain other Asbestos Insurance Entities have entered into settlement agreements with the Debtors, which are pending final execution and/or approval by Final Order of the Bankruptcy Court and/or the Ontario Superior Court of Justice (Commercial List) in the Matter of Babcock & Wilcox Canada (Court File No. 00-CL-3667). Subject to, and conditioned on, such final execution and final court approvals, those settlement agreements will satisfy the requirements for those settling insurers to be Settling Asbestos Insurance Entities as defined in the September 28 Plan because such settlement agreements: (i) are sufficiently comprehensive to warrant treatment under Section 524(g) of the Bankruptcy Code in the case of Asbestos PI Trust Claims or to warrant treatment under Section 105 of the Bankruptcy Code in the case of Class 7 Claims, and (ii) such insurers have been listed on the schedule of Settling Asbestos Insurance

¹⁸⁹ Docket # 6999.

Entities filed with the Court by the Plan Proponents on December 22, 2005, prior to the Confirmation Date subject to and conditioned on final execution and final court approvals.

VIII. SPECIFIC SEPTEMBER 28 PLAN FINDINGS

119. Based on this Court's review of the record in these Chapter 11 Cases and the affidavits admitted into evidence, this Court makes the following findings, which findings satisfy Section 7.12.1 of the September 28 Plan:

- (a) The Asbestos PI Channeling Injunction, the Asbestos PD Channeling Injunction, and the Asbestos Insurance Entity Injunction are to be implemented in connection with the September 28 Plan and the Asbestos PI Trust;¹⁹⁰
- (b) As of the Petition Date, the Debtors have been named as defendants in personal injury, wrongful death, or property damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;¹⁹¹
- (c) The Asbestos PI Trust is to be funded in part by securities of the Debtors and by the obligations of the Debtors to make future payments;¹⁹²
- (d) The Asbestos PI Trust, on the Effective Date, will be entitled, if specified contingencies occur, to own a majority of the voting shares of B&W, in its capacity as a Debtor and in its capacity as the direct or indirect parent corporation of all of the other Debtors;¹⁹³
- (e) The Asbestos PI Trust is to use its assets and income to pay Asbestos PI Trust Claims;¹⁹⁴
- (f) The Debtors are likely to be subject to substantial future Demands for payment arising out of the same or similar conduct or events that gave rise to the Asbestos PI Trust Claims, which are addressed by the Asbestos PI Channeling Injunction and the Asbestos Insurance Entity Injunction;¹⁹⁵

¹⁹⁰ *Supra* at ¶¶ 82-83.

¹⁹¹ *Supra* at ¶ 104.

¹⁹² *Supra* at ¶ 85.

¹⁹³ *Supra* at ¶ 86.

¹⁹⁴ *Supra* at ¶ 87.

¹⁹⁵ *Supra* at ¶ 88.

- (g) The actual amounts, numbers, and timing of Demands cannot be determined;¹⁹⁶
- (h) Pursuit of Demands outside the procedures prescribed by the September 28 Plan is likely to threaten the September 28 Plan's purpose to deal equitably with: Asbestos PI Claims; Asbestos PD Claims; Indirect Asbestos Personal Injury Claims; and Indirect Asbestos Property Damage Claims;¹⁹⁷
- (i) The terms of the Asbestos Insurance Entity Injunction, the Asbestos PI Channeling Injunction, and the Asbestos PD Channeling Injunction including any provisions barring actions against third parties, are set out in the September 28 Plan and in the Disclosure Statement;¹⁹⁸
- (j) Pursuant to court orders or otherwise, the Asbestos PI Trust shall operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of Asbestos PI Trust Claims, or other comparable mechanisms that provide reasonable assurance that the Asbestos PI Trust shall value, and be in a financial position to pay, Asbestos PI Trust Claims that involve similar Asbestos PI Trust Claims in substantially the same manner;¹⁹⁹
- (k) The FCR was appointed by this Court as part of the proceedings leading to the issuance of the Asbestos Insurance Entity Injunction and the Asbestos PI Channeling Injunction for the purpose of, among other things, protecting the rights of persons that might subsequently assert Demands of the kind that are addressed in the Asbestos Insurance Entity Injunction and the Asbestos PI Channeling Injunction and transferred to the Asbestos PI Trust;²⁰⁰
- (l) In light of the benefits provided, or to be provided, to the Asbestos PI Trust on behalf of each Asbestos Protected Party, the Asbestos Insurance Entity Injunction and the Asbestos PI Channeling Injunction are fair and equitable with respect to the persons that might subsequently assert Demands against any Asbestos Protected Party;²⁰¹
- (m) In light of the benefits provided, or to be provided, by the Reorganized Debtors on account of Class 7 Claims, the Asbestos PD Channeling Injunction is fair and equitable with respect to the persons that might

¹⁹⁶ *Supra* at ¶ 89.

¹⁹⁷ *Supra* at ¶ 90.

¹⁹⁸ *Supra* at ¶ 91.

¹⁹⁹ *Supra* at ¶¶ 93-96.

²⁰⁰ *Supra* at ¶ 98-99.

²⁰¹ *Supra* at ¶ 100.

subsequently assert Demands against any Asbestos Protected Party other than the Reorganized Debtors;²⁰²

- (n) This September 28 Plan complies with Section 524(g) of the Bankruptcy Code;²⁰³
- (o) The terms of this September 28 Plan and the Asbestos Insurance Rights Assignment Agreement do not violate any obligation of the Debtors or any Insurance Contributor under any consent-to-assignment provision of any Subject Asbestos Insurance Policy or Subject Asbestos Insurance Settlement Agreement;²⁰⁴
- (p) The terms of this September 28 Plan and the Asbestos Insurance Rights Assignment Agreement do not violate any obligation of the Debtors or any Insurance Contributor under any consent-to-settlement, cooperation, management-of-claims, or no-action provision of any Subject Asbestos Insurance Policy or Subject Asbestos Insurance Settlement Agreement;²⁰⁵
- (q) The Asbestos PI Insurance Rights Assignment does not materially increase any insurer's risk of providing coverage for asbestos-related liabilities under the relevant insurance policies as compared to the risk that was otherwise being borne by the insurers prior to the Effective Date;²⁰⁶
- (r) The Asbestos Insurance Entity Injunction, the Asbestos PI Channeling Injunction, and the Asbestos PD Channeling Injunction are essential to this September 28 Plan and the Debtors' reorganization efforts;²⁰⁷
- (s) An identity of interests exists among the Debtors and the Asbestos Protected Parties such that a claim asserted against any of the Asbestos Protected Parties gives rise to a claim against the Debtors, including by the operation of the law of indemnity and/or contribution;²⁰⁸
- (t) The McDermott Consideration and other benefits provided in this Plan for payment of Claims, including Asbestos PI Trust Claims, constitute both (1) substantial assets of this September 28 Plan and the reorganization; and (2) a fair, reasonable, and equitable settlement of all claims asserted against any party, including BWICO, MI, and MII, in the action captioned The Asbestos Claimants' Committee, on behalf of All Asbestos Personal Injury Claimants, and on behalf of The Estate of Babcock & Wilcox v.

²⁰² *Supra* at ¶¶ 101-112.

²⁰³ *Supra* at ¶ 82.

²⁰⁴ *Supra* at ¶ 114.

²⁰⁵ *Supra* at ¶ 113.

²⁰⁶ *Id.*

²⁰⁷ *Supra* at ¶¶ 104-106.

²⁰⁸ *Supra* at ¶ 101.

Babcock & Wilcox Investment Co., et al., Adv. No. 01-1155 (E.D. La. 2001);²⁰⁹

- (u) The duties and obligations of the Asbestos Insurance Entities under the Subject Asbestos Insurance Policies and Subject Asbestos Insurance Settlement Agreements are not diminished, reduced or eliminated by (1) the discharge, release, and extinguishment of the obligations and liabilities of the Asbestos Protected Parties (other than the Reorganized Debtors respecting Class 7 Claims) for and in respect of all Asbestos PI Trust Claims and Class 7 Claims; (2) the assumption of responsibility and liability for all Asbestos PI Trust Claims and Class 7 Claims; or (3) the assignment of the Asbestos Insurance Rights pursuant to this September 28 Plan and the Asbestos Insurance Rights Assignment Agreement;²¹⁰
- (v) The Asbestos PI Trust shall have the exclusive authority as of the Effective Date to defend all Asbestos PI Trust Claims involving Asbestos PI Insurance Rights; provided, however, that the Asbestos PI Trust may, in its sole discretion, afford any Entity, including any Asbestos Insurance Entity, the opportunity to participate in the resolution of any Asbestos PI Trust Claim;²¹¹
- (w) Prior to the Effective Date, the Debtors shall have the authority to prosecute and defend all Class 7 Claims involving Asbestos PD Insurance Rights. As of the Effective Date, the Reorganized Debtors shall have the sole and exclusive authority to prosecute and defend all Class 7 Claims involving Asbestos PD Insurance Rights;²¹²
- (x) From and after the Effective Date, holders of Class 8 Claims shall be permitted to assert their Claims against the Reorganized Debtors on the same terms and subject to the same defenses of the Debtors as existed without regard to the filing of the Debtors' Chapter 11 Cases;²¹³
- (y) All of the Debtors' insurers who are affording insurance coverage that is the subject of the Asbestos PI Insurance Rights Assignment have been given notice and an opportunity to be heard;²¹⁴
- (z) Upon confirmation and consummation of this September 28 Plan, the Non-Debtor Affiliate Settlement Agreement and the Non-Debtor Affiliate Release shall be in full force and effect.²¹⁵

²⁰⁹ Green Aff. ¶ 35.

²¹⁰ Plan § 11.2.

²¹¹ *Supra* at ¶ 84; Plan § 7.2.8.

²¹² *Supra* at ¶ 50; Plan § 7.5.

²¹³ *Supra* at ¶ 35; Plan § 3.2.8.2.

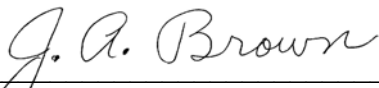
²¹⁴ *Supra* at ¶ 116.

²¹⁵ Plan § 7.7.

IX. CONCLUSION

120. For the reasons expressed in the foregoing opinion, this Court recommends that the September 28 Plan be confirmed.

New Orleans, Louisiana, December 28, 2005.



Jerry A. Brown
U.S. Bankruptcy Judge